IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

LAMONT PAUL VIGE   §

VS.   §   CIVIL ACTION NO. 1:09cv317

WARDEN STEVEN RICH   §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Lamont Paul Vige, an inmate confined at the Stiles Unit of the Texas Department

of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this petition for

writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate

Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court.

The Magistrate Judge recommends the petition be denied.

The court has received and considered the Report and Recommendation of United States

Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available

evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court conducted a *de novo* review of the objections in relation to the pleadings and the

applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes

petitioner's objections should be overruled. Further, the above-styled petition was a second or

successive petition for which the court lacks jurisdiction to entertain pursuant to 28 U.S.C. §

2244(b)(3). Petitioner previously filed another petition attacking the same disciplinary conviction.

See Vige v. Rich, Civil Action No. 1:09cv316 (E.D. Tex. Nov. 18, 2009). The petition was denied

on November 18, 2009. *Id.* Thus, this court lacks jurisdiction to entertain this petition absent prior permission from the Fifth Circuit Court of Appeals, which petitioner did not obtain.
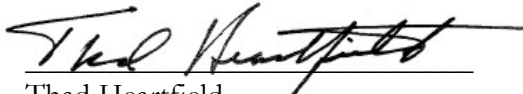
Furthermore, the petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the movant, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by petitioner are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Therefore, the movant has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability shall not be issued.

<u>O R D E R</u>

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this the 14 day of **November, 2011.**

Thad Heartfield
United States District Judge